

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2708

SPONSOR: Transportation Committee and Senator Sebesta

SUBJECT: Motor Vehicles

DATE: April 15, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McAuliffe</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This CS clarifies persons who sell large trucks must be licensed as motor vehicle dealers, and increases the restrictions against motor vehicle manufacturers, distributors and importers regarding what they can do to franchise motor vehicle dealers.

In addition, the CS provides proposed additional or relocation service only dealerships that do not sell or lease new motor vehicles are subject to existing notice and protest provisions. However, current mileage provisions for determining standing to protest apply; and the proposed service only dealership location is not subject to protest if the applicant is an existing dealer, there is not a dealer of the same line-make closer to the proposed service only dealership, and the proposed location is at least 7 miles from existing dealerships of the same line-make. This CS eliminates the requirement that a vehicle must have been driven by a prospective customer to be considered a "demonstrator".

This CS substantially amends sections 320.60, 320.64, 320.642, 320.643, 320.644, 320.645, and 501.976 of the Florida Statutes.

II. Present Situation:

Section 320.60, F.S., defines "motor vehicle" as any new automobile, motorcycle, or truck the equitable or legal title to which has never been transferred by a manufacturer, distributor, importer, or dealer to an ultimate purchaser; however, when legal title is not transferred but possession of a motor vehicle is transferred pursuant to a conditional sales contract or lease and the conditions are not satisfied and the vehicle is returned to the motor vehicle dealer, the motor vehicle may be resold by the motor vehicle dealer as a new motor vehicle, provided the selling motor vehicle dealer gives the following written notice to the purchaser: "THIS VEHICLE WAS

DELIVERED TO A PREVIOUS PURCHASER." The purchaser shall sign an acknowledgment, a copy of which is kept in the selling dealer's file. The definition does not include heavy trucks which, according to the Department of Highway Safety and Motor Vehicles (DHSMV), causes some ambiguity in terms of licensing motor vehicle dealers.

Section 320.64, F.S., provides grounds for DHSMV to deny, suspend, or revoke a motor vehicle dealer's license. The section does not specifically prohibit motor vehicle manufacturers, distributors and importers from selling or leasing vehicles at retail, although there are restrictions in this regard. Motor vehicle manufacturers, distributors and importers are also not prohibited from having franchise agreements that provide for the sale or lease of specific vehicles nor are they prohibited from requiring a franchise dealer to provide an extended warranty or requiring a certain number of vehicles to be sold by the dealer to be eligible for incentives or bonuses.

Section 320.642, F.S., provides any licensed motor vehicle dealer who proposes to establish an additional motor vehicle dealership, or permit the relocation of an existing dealer to a location within a community or territory where the same line-make vehicle is presently represented by a franchised motor vehicle dealer or dealers must give written notice of its intention by certified mail to DHSMV. Such notice must state:

1. The specific location at which the additional or relocated motor vehicle dealership will be established.
2. The date on or after which the licensee intends to be engaged in business with the additional or relocated motor vehicle dealer at the proposed location.
3. The identity of all motor vehicle dealers who are franchised to sell the same line-make vehicle with licensed locations in the county or any contiguous county to the county where the additional or relocated motor vehicle dealer is proposed to be located.
4. The names and addresses of the dealer-operator and principal investors in the proposed additional or relocated motor vehicle dealership.

The section further provides reasonably expected market penetration of the line-make motor vehicle for the community or territory involved, after consideration of all factors which may affect said penetration, including, but not limited to, demographic factors such as age, income, education, size class preference, product popularity, retail lease transactions, or other factors affecting sales to consumers of the community or territory.

Section 320.643, F.S., provides a motor vehicle manufacturer, distributor or importer is not required to prove in a court or hearing that their disapproval of a transfer of ownership of a franchise dealer is not unreasonable.

Section 320.644, F.S., provides the rejection of a change in executive management of franchise dealership does not require written notification from the motor vehicle manufacturer, distributor or importer and does not assume the transfer is approved if such written notification is not provided. The manufacturer, distributor or importer has to file a complaint to oppose a change in executive management and, if that complaint is not received, the change is considered approved.

Section 320.645, F.S., provides certain motor vehicle distributors who owned and operated a dealership in Florida until July 1, 1996, are authorized to own and operate that dealership, as long as it is of a different line-make than the distributorship.

Section 501.976, F.S., provides a vehicle is considered to be a "demonstrator" if it was driven by a prospective customer of the dealership and it is compliant with the definition of demonstrator in s. 320.60(3), Florida Statutes.

Section 817.7001, F.S., provides the definition of entities which are not considered "credit service organization." The section does not exclude a motor vehicle dealership.

III. Effect of Proposed Changes:

Section 320.60, F.S., is amended to include trucks, regardless of weight, in the definition of "motor vehicle," thereby requiring a dealership selling such trucks to be licensed by DHSMV. "Service" is defined to mean any maintenance or repair of any motor vehicle or used motor vehicle that is sold or provided to an owner, operator, or user pursuant to a motor vehicle warranty, or any warranty extension. "Used motor vehicle" is defined as any motor vehicle the title to which has been transferred, at least once, by a manufacturer, distributor, importer, or dealer to an ultimate purchaser.

Section 320.64, F.S., is amended to prohibit a motor vehicle manufacturer, distributor or importer from:

- Leasing or selling motor vehicles at retail, other than heavy trucks with a net weight of more than 8,000 pounds;
- Requiring a franchise dealer to sell or lease any used vehicle including any used motor vehicles.
- Refusing to assign or sell motor vehicles to a motor vehicle dealer because the dealer refuses to sell, lease, or certify used motor vehicles.

The CS amends s. 320.642, F.S., to clarify Florida law gives standing to existing dealers to protest additional or relocated service only dealerships of the same line-make, and to provide a protesting dealer no longer has the burden of proving benefits to consumers from the new dealership cannot be obtained by other geographic or demographic changes in the community or territory.

In addition, the CS provides proposed additional or relocation service only dealerships that do not sell or lease new motor vehicles are subject to existing notice and protest provisions. However, current mileage provisions for determining standing to protest apply; and the proposed service only dealership location is not subject to protest if the applicant is an existing dealer, there is not a dealer of the same line-make closer to the proposed service only dealership, and the proposed location is at least 7 miles from existing dealerships of the same line-make.

When determining whether existing dealers of the same line-make are providing adequate representation in a community or territory, DHSMV may not consider: impacts on consumers, public interest, existing dealers, or the licensee, except as the impact relates to service; the

expected market penetration of the line-make; the adequacy of facilities other than those related to service; and the volume of registrations in the community or territory.

The DHSMV may only issue a license permitting vehicle service and not sales to applicants for a service only dealership, and notice and protest provisions will apply if the service only dealer later seeks to sell new vehicles.

Sections 320.643 and 320.644, F.S., are amended to create uniform procedures for requesting and objecting to transfers of franchise agreements, transfers of assets, and changes in executive management control. The CS provides a dealer or transferee must notify a licensee of the transfer or change in executive management control. If the licensee objects to the transfer or change, the dealer may file a complaint. At a hearing on the complaint, the licensee is required to prove the transfer or change is to a person who is not of good moral character, does not meet the licensee's financial qualifications (in the case of transfers), or does not have the required business experience. Pending a hearing regarding a proposed transfer of an agreement or assets, or a proposed change in executive management control, the franchise agreement will continue in effect in accordance with its terms, and DHSMV must expedite the disposition.

The CS also provides it is a violation of the Act for a licensee to reject or withhold approval of a proposed transfer or change in executive management control, unless it can prove in defense of a claim brought seeking treble damages under s. 320.697, F.S., that the rejection or withholding of approval was, in fact, reasonable. The CS provides that what is reasonable is to be determined by application of an objective standard, and further expressly provides that a licensee is not protected from violation of the s. 320.643, F.S., by merely alleging the permitted statutory grounds in a written rejection of a proposed transfer.

The CS clarifies "executive management control" means the person or persons designated under the franchise agreement as the dealer/operator, executive manager, or similarly designated persons who are responsible for the overall day to day operation of the dealership.

Section 320.645, F.S., is amended to authorize certain distributors, or their common entities, to own and operate one or more dealerships in Florida of a different line make than the distributorship, regardless of ownership prior to July 1, 1996.

Section 501.976, F.S., is amended to provide when a dealer represents a vehicle as a "demonstrator" it must comply with the definition of demonstrator in s. 320.60(3), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
